

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S BRIEF
AND
APPENDIX**

77-1401

~~T-7930~~

IN THE
United States Court of Appeals

FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

WILLIAM ROCHE,
Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK.

**BRIEF FOR PLAINTIFF-APPELLEE
AND APPENDIX**

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IN THE
United States Court of Appeals

For the Second Circuit

Docket No. T-7930

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

WILLIAM ROCHE,
Defendant-Appellant.

Appeal From the United States District Court
for the Western District of New York

BRIEF FOR PLAINTIFF-APPELLEE

Preliminary Statement

Defendant-Appellant William Roche was 22 years old at the time of his conviction and sentencing, following his plea of guilty to a charge of bank larceny, 18 U.S.C., § 2113(b).¹ Due to his age, Roche was a Young Adult Offender as defined in 18, U.S.C., § 4216 ("Defendant who has attained his twenty second birthday but has not attained his twenty-sixth birthday at the time of conviction"). Having such status, Roche was en-

¹ The Two Count Indictment charged violations of 18 U.S.C., §§ 2113(a) and 2113(b), arising out of the February 28, 1977 robbery of a Buffalo area bank in which approximately \$2,371.00 was taken.

titled to sentencing under the Federal Youth Corrections Act, 18 U.S.C., § 5005 *et seq.* However, Roche was denied sentencing under the FYCA and was sentenced to six years imprisonment by the Honorable John T. Elfvin, United States District Court Judge, Western District of New York. Roche is here on appeal of this sentence.

Statement of Facts

The Government is satisfied with the defendant's Statement of Facts.

ARGUMENT

Roche appeals with the basic argument that John T. Elfvin improperly denied him the privilege of a sentence under the Federal Youth Corrections Act.

The Government's position is that Judge Elfvin considered, and then properly denied the defendant this particular sentencing treatment. The Government asserts that Judge Elfvin's reasons were legitimate, and his comments at sentence, taken as a whole, support this reasoned exercise of his discretion.

Point I. Broad discretion is vested in the trial judge when imposing a sentence.

The sentencing function is exclusively vested in the trial court, and that sentence is generally not reviewable if within the terms allowed by a statute. *Dorszynski v. United States*, 418 U.S. 424, 440-441 (1974). The Supreme Court has interpreted the Federal Youth Corrections Act as designed to enhance judicial discretion to the extent that "once it is made clear that the sentencing judge has considered the option of treat-

ment under the (FYCA) and rejected it, however, no appellate review is warranted. *Dorszynski v. United States, supra* at p. 443. Since Judge Elfvin was mindful that Roche was eligible for sentencing under the FYCA, and since the six-year sentence imposed is within the statutory limits², appellate review should be foreclosed in this case.

The Defendant raises the issues that the reasoning employed and the approach used (sentencing in a "fixed and mechanical way") by Judge Elfvin in this case were error. In these cases where appellate review is undertaken, only a limited review of the "judicial process by which the particular punishment was determined" is available. *Dorszynski v. U.S., supra*, at p. 443 citing *U.S. v. Hartford*, 489 F.2d 652, 654 (5th Cir., 1974). Thus, there may be appellate review when sentencing discretion is not exercised at all, *Yates v. U.S.*, 356 U.S. 363, 366-367 (1958); when the trial court relies upon improper or inaccurate information, *U.S. v. Tucker*, 404 U.S. 443, 447-448 (1972); when the sentence is not individualized but is imposed as a result of a fixed judicial policy, *U.S. v. Ingram*, 530 F.2d 602 (4th Cir., 1976); *U.S. v. Baker*, 487 F.2d 360 (2nd Cir., 1973); when the pre-sentencing procedure is dispensed with altogether, *U.S. v. Frazier*, 479 F.2d 983, 986-987 (2nd Cir., 1973); or when the sentencing statute is applied to only one class of persons, *U.S. v. Schwarz*, 500 F.2d 1350 (2nd Cir., 1974).

It is submitted that Judge Elfvin committed none of these errors and that, therefore, the sentence imposed is a proper one.

² Section 2113(b) allows for a maximum sentence of up to ten years imprisonment.

Point II. Judge Elfvin complied with statutory requirements when sentencing the defendant and properly rejected a sentence under the Federal Youth Corrections Act.

The sentencing judge is directed by 18 U.S.C., § 4216³ to take into consideration the "previous record of the defendant as to delinquency or criminal experience, his social background, capabilities, mental and physical health, and such other factors as may be considered pertinent." Judge Elfvin properly considered these factors and others which related to Roche individually.

Judge Elfvin read and considered the pre-sentence report, which included numerous letters submitted on Roche's behalf and the recommendations of the Probation Department. As indicated by defendant's counsel (Appx. 2-3), this pre-sentence report contained information concerning defendant's criminal background, social background, employment history, and mental and physical health. At the time of sentencing, Judge Elfvin also reviewed defendant's own explanation of his actions and heard defendant's own statement of remorse (Appx. 5-7, 20-21).

Judge Elfvin also considered the circumstances leading to the commission of this crime, and the manner in which the crime was committed. *U.S. v. Bamberger*, 456 F.2d 1119, 1128-

³ 18 U.S.C., § 4216 provides in full: Young Adult Offenders: In the case of a defendant who has attained his twenty-second birthday but has not attained his twenty-sixth birthday at the time of conviction, if, after taking into consideration the previous record of the defendant as to delinquency or criminal experience, his social background, capabilities, mental and physical health, and such other factors as may be considered pertinent, the court finds that there are reasonable grounds to believe that the defendant will benefit from the treatment provided under the Federal Youth Corrections Act (18 U.S.C., chap. 402) sentence may be imposed pursuant to the provisions of such Act.

1129 n. 7 (3rd Cir., 1972), cited in *U.S. v. Kaylor*, 491 F.2d 1133, 1137 n.5 (2nd Cir., 1974). The Judge took into consideration such factors as: this crime was a well-planned and determined effort by the defendant (Appx. 23); the defendant conducted a bank robbery in order to compensate himself for money lost on a recent trip (Appx. 22-23); the defendant did not panic during the robbery and apparently felt no remorse after the robbery (Appx. 24-25); the defendant prepared an elaborate note indicating that he had kidnapped someone, and for this fictitious victim's benefit the teller should hand over the money (Appx. 23-24); the defendant was not acting out of any particular stress, such as alcohol, drugs, or the pressure of friends (Appx. 26). For these reasons, Judge Elfvin regarded punishment and deterrence as important objectives in sentencing Roche (Appx. 28-29). Also, before imposing sentence, Judge Elfvin "gave credit" for restitution made by the defendant (Appx. 30).

Based on all these factors, Judge Elfvin found that there was no need for sentencing under the Federal Youth Corrections Act in Roche's case since Roche did not "lend himself to the . . . treatment and supervision called for in (that Act)" (Appx. 31).

Merely because Judge Elfvin considered factors similar to those considered in *U.S. v. Schwarz*, 500 F.2d 1350 (2nd Cir., 1974), *e.g.* defendant's education and social background, does not mean error was committed. On the contrary, consideration of such factors is statutorily mandated by § 4216. The error and the basis for reversal and resentencing in *U.S. v. Schwarz, supra*, were that the remarks of the sentencing judge were "susceptible of the meaning that only a specific class of persons can claim consideration under the Act." *U.S. v. Schwarz, supra*, at p. 1352. Since the defendant in *U.S. v. Schwarz, supra*, did not belong to that "specific class," the sen-

tencing judge declared her ineligible for treatment under the FYCA. Such reasoning indicated to this court a fixed and mechanical approach to sentencing rather than a careful appraisal of individual factors. Nowhere did Judge Elfvin express or imply that defendant Roche belonged to a specific class. True, Judge Elfvin considered Roche's education and social background, but he did not hold these against the defendant to automatically declare him ineligible for FYCA sentencing. Throughout the sentencing remarks, Judge Elfvin was mindful of Roche's eligibility and status, and the transcript of the sentencing hearing attests to Judge Elfvin's careful appraisal of the variable components relevant to the sentence on an individual basis. It is critical to note that Judge Elfvin's finding was not one of ineligibility, but one of "no benefit" (Appx. 30).

Defendant also contends that Judge Elfvin improperly considered the fact that he was convicted of bank robbery, arguing that Judge Elfvin considered only the crime and not the defendant's individual situation. Consideration of the type of crime is not cause for resentencing, *per se*. *U.S. v. Kaylor, supra*, at p. 1137. In *U.S. v. Negron*, 548 F.2d 1085, 1087 (2nd Cir., 1977), the defendant, a young adult offender, was denied treatment under the FYCA due to the "particular part" defendant played in a "cocaine transaction" and was sentenced to ten years imprisonment, and deportation. Defendant argued that the sentencing judge failed to exercise discretion and considered only the "type of crime." This court rejected *Negron's* arguments and affirmed the sentence because the district judge read and considered the presentence report which gave details relevant to several of the statutory criteria. Likewise, Judge Elfvin, while expressing a basic feeling about the use of the FYCA in bank robbery cases, made it clear that his decision in this case is based on his evaluation of Mr. Roche individually.

"I have decided for those two reasons, namely, I don't think Mr. Roche lends himself to the need for treatment and supervision that is called for in there. I do have a basic feeling although obviously I give individual consideration in each case, but I do have a basic feeling in bankrobbery cases that it is not to be applied. The primary reason is I don't see any need for it in the case of Mr. Roche."

Apparently, consideration of the information in a pre-sentence report is sufficient to sustain a sentence, despite consideration of otherwise improper information. In *U.S. v. Allen*, 510 F.2d 651, 653 (D.C. Cir., 1974), the Court of Appeals upheld a trial judge who read the pre-sentence report but who refused to sentence a young adult offender under the FYCA because, among other reasons, the Youth Center facilities were overcrowded. Thus, even for the sake of argument, it if was improper for Judge Elfvin to take into account the type of crime committed, the record as a whole indicates individualization of sentencing.

Conclusion

Based on the extensive individual appraisal given defendant Roche, the sentence imposed should stand. Judge Elfvin's sentence was well below the maximum, giving special consideration to the defendant's personal background and to the fact of restitution. This would not have been done had there been a fixed policy of sentencing in bank robbery cases. Judge Elfvin read and considered the pre-sentence report and all other information presented by defendant and defendant's counsel. It cannot be said that on such a record, there was not a valid exercise of discretion by Judge Elfvin to reject sentencing the defendant under the FYCA.

For these reasons, the Government respectfully requests that the conviction and sentence be affirmed.

Respectfully submitted,

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1a
APPENDIX.

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

3 * * * * *

4 THE UNITED STATES

5 -v-

CR. -77 42

6 WILLIAM V. ROCHE,

7 DEFENDANT

8 * * * * *

9 Proceedings of Sentencing held before the HON.
10 JOHN T. ELFVIN, United States District Court Judge,
11 in Part II, United States Court House, Buffalo, New
12 York, on August 29, 1977.

13
14 APPEARANCES:

RICHARD J. ARCARA,
UNITED STATES ATTORNEY, by
JAMES FRONK,
Ass't United States Attorney

DENIS A. SCINTA, ESQ.
Attorney for the Defendant



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WESTERN DISTRICT OF NEW YORK

1 THE COURT:

Criminal 77-42, United States
2 versus Roche.

3 Now, Mr. Scinta, you have had
4 an opportunity to read the pre-
5 sentence report?

6 MR. SCINTA: Yes, I have, your Honor.

7 THE COURT: And do you find anything that
8 is inaccurate therein?

9 MR. SCINTA: No, your Honor.

10 THE COURT: I will listen to anything you
11 have to say in behalf of Mr. Roche.

12 MR. SCINTA: Your Honor, very simply, and
13 I will try to be as brief as possible,
14 Mr. Roche stands before the Court
15 facing a possible prison term of
16 up to ten years and a possible fine
17 in addition thereto. We have asked
18 the Court to consider the Young
19 Adult Offender's provisions and
20 the Youth Corrections Act in terms
21 of Mr. Roche's potential sentence.
22 I believe that Mr. Roche was twenty-
23 two years old at the time the plea
24 was entered in this case and therefore,
25 we look first to the Young Adult

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1 Offender's section, that if the
2 Court so decides under those circum-
3 stances delineated therein, to look
4 at this matter from the view point
5 of the Federal Youth Corrections
6 Act, it could do so. We would
7 strongly urge that the Court do so
8 taking into account the factors
9 found at Title 18, Section 4209.
10 The defendant's criminal background
11 is minute. This is his first
12 major involvement with the law.
13 His social background comes forth
14 from the pre-sentence report
15 submitted to the Court. His
16 capabilities are very definitely
17 set forth. He has worked steadily
18 at a place of employment, Magic
19 Vending. His mental and physical
20 health is set forth in the pre-
21 sentence report and found both to
22 be good and stable. The other
23 pertinent factors are that Mr. Roche
24 comes before the Court with great
25 remorse having done what he has done.

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1 The Court, I think, can look to the
2 Federal Youth Corrections Act and
3 can afford Mr. Roche the opportunity
4 to take advantage of the provisions
5 contained therein.

6 Getting back to the issue
7 on point, your Honor, very, very
8 straightforwardly I have read the
9 probation report, I have read the
10 pre-sentence report. Mr. Roche
11 wrote a letter to the Court which I
12 can say in all candor I had no
13 review with him at all. He took
14 it upon himself, this is his right
15 to write this Court a letter. That
16 letter was not reviewed by me,
17 corrected by me or changed by me
18 or seen by me until I read the
19 report this afternoon.

20 THE COURT:

Is that incorporated in the
21 report?

22 MR. SCINTA:

Yes, your Honor, it's in the
23 body of the report.

24 THE COURT:

Yes.

25 MR. SCINTA:

In addition, letters were sub-

1 mitted to the Probation Department
2 for incorporation into the report
3 one was a work form submitted by
4 Mr. Cavaretta from Magic Vending
5 together with a letter to the Court
6 from Mr. Cavaretta. In addition,
7 it is my understanding that Mr.
8 Cavaretta submitted to the Court
9 another letter written by himself
10 to you without going through myself
11 or the Probation Department for
12 review or consideration.

13 THE COURT:

 That is what I was wondering.
14 I don't remember a separate letter.

15 There is in the body of the
16 pre-sentence report, a brief letter
17 that does not have a date on it,
18 it is typed in the report that, "I
19 am writing to you to explain what
20 caused me to do what I did. In
21 February, I went on vacation to
22 Marco Island in Florida. At the
23 airport in Miami, I had my wallet
24 lifted from me containing the fifteen
25 hundred dollars that I had borrowed

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1 for the vacation. At that point,
2 I felt as though society owed me
3 the money in which I had lost. On
4 the plane ride back to Buffalo,
5 I decided to steal the money from a
6 bank. In reality now, I find it
7 hard to explain to you the reason
8 for something that there can be no
9 reason for. I can only say that I
10 realize now that society owes me
11 nothing and that I must take my
12 mistakes and eat them just as every-
13 one else does. All through my life
14 I have never been afraid of hurting
15 myself. Now I've managed to scar
16 the people that I love so much.
17 This has been the hardest judgment
18 of all. I only hope that I can
19 make it up to them some day. To
20 do this, I must never let greed
21 take me off the path which I set
22 for myself. I wish now to continue
23 a normal way of life and fulfill the
24 expectation of myself and the people
25 that I love so much.", signed,

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William Roche. Now, I have that letter. Was there another letter?

MR. SCINTA:

It would be a letter from Mr. Cavaretta sent directly to the Court which would not be incorporated in the body.

THE COURT:

I have that. I thought you said there was another letter from Mr. Roche.

MR. SCINTA:

No.

THE COURT:

I have a letter from James V. Cavaretta dated August 10, 1977 a letter from Charles F. Cravotta dated August 11th, a letter from John R. Chiarmonte, dated August 12th, a letter from James D. Cavaretta dated August 17, a letter from - it appears to be a Marvin H. Jacobs dated August 10, a letter from a Cornelius H. and Elenor S. Westfall, dated August 15, and one from John J. McCowan, dated August 15, one from Andrew V. Tramont, a Doctor in Clarence, August 19, and one from Vincent

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1 S. Guarino dated August 12, a letter
2 from Rose - Mrs. Rosemary Lelt. or
3 Felt, L-E-L-T or F-E-L-T, undated
4 and one from a Robert Young undated,
5 and a further letter from James
6 V. Cavaretta dated August 18, and
7 one from John F. Paulus dated
8 August 19, and then a short memo
9 from Mr. Wagner indicating that
10 two sums of money, namely, one
11 thousand eight hundred and sixty-
12 one dollars and five hundred and ten
13 dollars and seven cents had been
14 paid over to the Government by
15 or on behalf of Mr. Roche by way of
16 restitution.

17 Now, is there a second letter
18 from --

19 MR. SCINTA:

20 You have the second letter
21 from Mr. Cavaretta, that would be
22 the August 18th letter in addition
23 to the August 10th letter.

24 THE COURT:

25 I thought you said there was
another letter from Mr. Roche.

MR. SCINTA:

No, your Honor. I'm sorry. I

1
2 may have misstated or you may have
3 misunderstood me.

4 At this point, your Honor,
5 you have reviewed list of
6 individuals who have written letters
7 to you on behalf of Mr. Roche and
8 I think interestingly enough just
9 some of the letters which you
10 reviewed should point out the fact
11 that people do think much of Mr.
12 Roche and are surprised and shocked
13 to find him in this situation. Mr.
14 Cravotta quite candidly asked the
15 Court for leniency looking back into
16 his own life history and finding
17 that he received leniency and has
18 benefited from that leniency today
19 finding himself as an accountant
20 for a rather successful business
21 operation here in the Western District.
22 I think the letter from Mr. Cavaretta
23 James B. Cavaretta indicates to you
24 that he has known Mr. Roche almost
25 his entire lifetime, that he deals
with individuals, boys and girls each

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1 day because of his position at the
2 school where he works, he finds that
3 Mr. Roche doesn't have any of those
4 attributes which you would find
5 troublesome or burdensome to leading
6 a fair and law abiding life. He asks
7 too, of course, for leniency. He
8 finds further that the defendant
9 has no family, drinking or drug
10 problems. He thinks that Mr. Roche
11 reacted out of something being
12 human, he made a mistake. There are
13 three letters from co-employees
14 which I will ask the Court to review;
15 those letters indicate the manner
16 in which Mr. Roche is held in esteem
17 by his co-workers. There is a letter
18 from Mr. and Mrs. Westfall who
19 indicated and discussed with the
20 Court the type of home situation
21 that Bill comes from. His parents
22 are here today. If the Court wishes
23 to have any comment or ask any
24 questions of them, they are here in
25 the courtroom. This is not a situation

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1 of a young man who has no background
2 ability at all. He made a mistake
3 and he candidly admits his mistake
4 and his wrongdoing. Mr. and Mrs.
5 Westfall point out the home background.
6 There's a letter from Dr. Tramont
7 who indicates he has known Mr. Roche
8 and explains the situation. There is
9 a letter from John McGowan, your
10 Honor, a police officer, police
11 detective. He indicates what he
12 knows about this young man and
13 further he indicates that his
14 past history with the police
15 department would make him believe
16 and make him feel that Mr. Roche
17 is a proper candidate for leniency.
18 He says in the end, "I believe
19 incarceration would do more harm than
20 good.", I hope the Court concurs
21 in that conclusion. Finally, we have
22 a letter from a Probation Officer,
23 a person whose job it is to deal
24 with individuals who get in trouble
25 with the law and has to assess these

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1 individuals before making his own
2 recommendations to the Court and
3 does bear from expertise perhaps
4 greater than the other individual
5 letters. He reiterates to the
6 Court that Mr. Roche has a positive
7 character, he is not asking for
8 any excuse for his present wrong-
9 doings, but he believes that
10 rehabilitation can be best served
11 to this young man through a sentence
12 of that of keeping him in the
13 community.

14 Your Honor, I think we have
15 been able to present to the Court
16 a broad spectrum of individuals
17 who have looked at Bill Roche
18 expressed shock, surprise, and the
19 need for some form of punishment to
20 him as a result of his activities.
21 Mr. Cavaretta has written this
22 court two letters. I believe that
23 Mr. Cavaretta stands in the same
24 position as Bill's parents would.
25 I believe Mr. Cavaretta feels

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1 greatly about this young man
2 and this young man feels greatly
3 about him. The first letter
4 indicates the emotion with which
5 Mr. Roche talked to Mr. Cavaretta
6 about this incident. Mr. Roche
7 broke down and cried to him and told
8 him he was sorry for doing it and
9 sorry for embarrassing the company.
10 I do not know the details of the
11 contents of Mr. Cavaretta's second
12 letter to the Court, but I assume
13 they are along the same lines. I
14 have read the Probation Department's
15 report.

16 THE COURT:

It is attached to the pre-
sentence report, you did not read it?

18 MR. SCINTA:

I know, I did not read it this
19 morning. I thought that that was
20 something Mr. Cavaretta wanted to
21 convey to the Court in his own way
22 and didn't want to use an inter-
23 mediary.

24 I looked at the Probation
25 Department's report, again an

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1 individual who is trained in making
2 out these reports who reports to
3 you and other judges in the area
4 about what possible sentences and
5 what recommendations he would make.
6 This Probation Officer found in
7 two or three places that the defendant
8 appears very remorseful for his
9 acts, that again he commented as
10 much remorse and sorrow for the
11 sorrow he caused for his family.
12 He impressed the Probation Officer,
13 honest, alert, well oriented and
14 of average intelligence. I think,
15 your Honor, these factors from the
16 Probation Officer, the investigating
17 officer, should be important to the
18 Court also.

19 In addition, your Honor, Mr.
20 Roches has made the M & T Bank in
21 East Aurora the subject of this
22 robbery whole to the best extent
23 that he could. It's obvious that
24 he could do only what is civilly his
25 responsibility to do, he repaid the

1 money and he repaid the money again
2 with the help of family and friends
3 and persons interested in him. Your
4 Honor, quite candidly, the reason
5 there are two envelopes there is
6 because the first envelope is the
7 proceeds of the bank's money which
8 was not used by Mr. Roche at all
9 in any way, shape or form and we
10 gave back to Mr. Wagner that
11 envelope with that money so that
12 they could then determine if there
13 is any bait money contained therein
14 and eliminate any future problem
15 if this bait money should show up.
16 I think Mr. Roche in his letter to
17 the Court, and I'm glad the Court
18 read it out loud because I would have
19 just reiterated it over and over
20 again, I think the Court can find
21 that Mr. Roche is the type of indi-
22 vidual, with the people here today,
23 Mr. and Mrs. Cavaretto, his parents,
24 his girlfriend, hopefully soon to be
25 his fiancée, two brothers of - two sons

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1 of Mr. Cavaretta, can hopefully
2 find that this individual would
3 best be served by giving him a chance
4 to return to society. He has worked,
5 he works hard, his job is not the
6 type of job where one could say it's
7 the best job in the world, but it's
8 a job Bill is capable of doing and
9 he does well as per the report of
10 Mr. Cavaretta. He handles cash for
11 Mr. Cavaretta up to seven thousand
12 dollars at a time. He has never
13 been short, there's never been any
14 problems. Your Honor, I think
15 Mr. Roche panicked, he panicked very
16 seriously. He stepped outside the
17 bounds of the law very seriously.
18 He went in and he robbed a bank.
19 Your Honor, I think that that
20 deviation is so out of character
21 for Mr. Roche that the Court can
22 look at this entire situation and
23 find that that out-of-character,
24 out-of-characteriness that was
25 exhibited on February of last year

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1 will not occur again. He has
2 family that are backing him, he
3 lives at home which is rare these
4 days for twenty-two year old boy
5 to live at home and get along well
6 with the family. He has a girlfriend
7 who he is fond of and she is fond
8 of him, and she is here in court
9 today. He has an employer and a
10 trusted friend and confidant in
11 Mr. Cavaratta who will help him
12 work toward rehabilitation. He
13 has members of Mr. Cavaratta's family
14 and members of his own family who
15 will help him work toward rehabili-
16 tation. Further, your Honor, he
17 has the right attitude, an attitude
18 which I did not put in writing
19 for him. Many times lawyers will
20 put in a letter and review it.
21 I did not, and I say this as an
22 officer of the Court, did not
23 see that until I read it here today
24 before the Court. I think that
25 single most important factor, he has

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1 the right attitude. He had the
2 wrong attitude, coming back on the
3 plane and the letter explains how
4 the attitude has changed. I think
5 that is the key towards this Court
6 giving Mr. Roche a chance to be
7 placed on probation. To sever him
8 from these people now, these
9 people who are working with him
10 could embitter him, I would hope it
11 would not, but it could embitter him
12 and I think if we're talking about
13 rehabilitation and talking about
14 getting this boy back on the right
15 vein for this deviation of the law
16 that's the proper approach. I know
17 that deterrence is a factor and
18 I know that punishment is a factor.
19 Reading the letter, looking at the
20 shame he has caused his family
21 the acknowledgement of the shame he
22 has caused his family again is
23 something that should be a deterrent
24 for him. So far as a deterrent
25 for others, your Honor, by placing

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1 the man in jail, I think in this case
2 is outweighed. If the Court wanted
3 to demonstrate deterrents to other
4 people by punishing this man and
5 placing him in jail, I don't think
6 it will be proper. I think here
7 the Court can look at this situation
8 and say, "I will be deterring this
9 young man's individual rehabilitative
10 ability and process that has already
11 started." I don't think the Court
12 has to demonstrate to the outside
13 world in this case that prison is
14 the only answer for a person who
15 robbed a bank. I think in this
16 case Mr. Roche's situation will
17 outweigh any benefit that would be
18 had to society by deterrents of
19 two other people. I think he'll
20 never do it again and I think the
21 punishment has been just there all
22 along. The people are here today,
23 people are behind him, and it's not
24 because we brought him here and we
25 made some magical presentation. I

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1 think the whole picture that the
2 Court has painted to us by selection
3 of letters which are appropriate
4 I am convinced that the opportunity
5 Mr. Roche asked for should be given
6 him and that is probation to continue
7 to lead the same type of life he
8 did before that ill fated week or
9 so when he decided to stray from
10 our societal laws.

11 THE COURT:

So, when you are talking about
12 a sentencing under the Youth
13 Corrections Act, you are talking
14 only about 5010 A where there would
15 not be any incarceration?

16 MR. SCINTA:

Yes, your Honor. I would be
17 speaking to the Court of 5010 A.

18 THE COURT:

Mr. Roche, I will listen to
19 anything that you yourself have to
20 say to me.

21 DEFENDANT:

Well, your Honor, I feel as
22 though I have been punished much
23 more than I feel the Court could
24 punish me more. I just don't think
25 there's any way of doing anything

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1 wrong again. I have - I gotta look
2 at my life and ability to change
3 the way it's going to turn out
4 because of what's happened here and
5 I think I can accomplish that change.

6 THE COURT: Do you have anything further?

7 DEFENDANT: No, your Honor.

8 THE COURT: Mr. Fronk, does the Government
9 have any comment?

10 MR. FRONK: No, your Honor. I have read
11 the pre-sentence report this morning,
12 it's thorough, it's detailed, it's
13 accuracy, I don't think there is any
14 question about, and I had an occasion
15 to read the letters and they state
16 exactly what they appear to state
17 on the surface. We have no
18 recommendation for any type of
19 sentence, we leave that up to the
20 Court.

21 THE COURT: Mr. Roche, your attorney Mr.
22 Scinta rationalizes your situation
23 by saying you, quote panicked unquote
24 and what I see happened and I think
25 what you know what happened was

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1 there wasn't any panicking such as
2 you - out of a particular moment
3 and out of some fear or other
4 emotion, you just decided to go
5 in and rob a bank. You, according
6 to what you tell me, had to borrow
7 a certain sum of money from a
8 credit union, the implication is
9 that you borrowed it for the purpose
10 of taking a trip or some other event,
11 and you went off to Florida and
12 there through some misadventure
13 you lost fifteen hundred dollars
14 and that didn't change at all your
15 situation, you had borrowed fifteen
16 hundred dollars, or whatever the
17 sum was, that that was going to be
18 used for this trip or maybe some-
19 thing else and you still remained
20 indebted to the credit union as you
21 would have remained indebted if
22 you had spent the fifteen hundred
23 dollars as you obviously intended
24 to do it. It wasn't any set-back
25 so far as you were concerned except

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1 you were robbed of the benefit,
2 the material benefit of whatever
3 that fifteen hundred dollars could
4 get for you, whether it was a
5 vacation in Florida or something
6 else you were going to do with it,
7 you still were indebted to the
8 credit union for whatever you had
9 borrowed from them. You determined
10 that you did not do it in just
11 a spur of the moment operation because
12 you decided that you were going to
13 get it back, you thought although
14 you say now that you knew that this
15 feeling and rationale was wrong,
16 you felt that society owed you this
17 money back and you determined to get
18 it back from a bank and you were
19 very deliberative about it, you
20 decided you would go to an outlying
21 place like East Aurora where you
22 would not be as readily recognized
23 to carry it off, you prepared a note
24 that was not just the type of simple
25 note that a lot of our bank robbers

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1 use of just sliding it in, put all
2 the money in the bag, I have a gun,
3 or you know, give me your money,
4 and so forth, you wrote out a
5 fairly elaborate note indicating
6 that you had somebody held, you
7 kidnapped somebody, and if that
8 person wanted to be well and
9 healthy, give me all your tens,
10 twenties, and so forth, and you
11 carried out the robbery. You did
12 not thereafter have any pangs of
13 remorse, you did not take yourself
14 into the police within the next
15 half hour or hour or the next morning,
16 you did not suddenly realize that
17 what you had done was wrong and had
18 some pangs of conscience or any
19 desire to get yourself out of it,
20 and it wasn't until an anonymous
21 call came in and indicated that the
22 person who was on this bank sur-
23veillance camera might have been
24 Billy Roche, and except for that
25 kind of tip, the money you had gotten

1 out of the bank would remain in
2 your pocket, and it is my deter-
3 mination you never would have
4 given it back and you would not be
5 standing before me today perhaps.
6 Now, you have a lot of people who
7 had a lot of faith in you. You say
8 that you have been punished more
9 than I can punish you just by virtue
10 of the fact that you have breached
11 this faith. These people who have
12 had the idea that William Roche
13 was a different kind of boy, a
14 different kind of man, he wouldn't
15 do this type of thing that's been
16 going on with such prevalence among
17 people your age, whether they be
18 black or white, Bill Roche wouldn't
19 do that; Bill Roche has done it
20 and all these people now are
21 astonished and shocked now that
22 it has come about and this is all
23 the punishment that God or the Court
24 or anybody else can mete out to you,
25 this has to be it. I am not too

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1 worried about your rehabilitation.
2 I perhaps in one regard ought to
3 be in view of what I said about
4 the fact that you obviously planned
5 this. You just didn't do it well,
6 under the influence of drugs you
7 didn't do it well, you were drunk
8 from alcohol and you didn't do
9 it well, a dare of some friends
10 or going along with someone else
11 who was going to do it and you
12 would have been chicken if you
13 hadn't gone along. This was well
14 planned, thought out by you, yourself,
15 and carried out by yourself. Now
16 in those circumstances, I ought to
17 be concerned about your rehabilitation,
18 but I think I have got myself a lot
19 more faith in these individuals who
20 are standing behind you who have
21 written letters to me and are here
22 in the courtroom with you today
23 then perhaps you yourself have,
24 and I think that probably in spite
25 of your own tendency to be a criminal

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1 and that is actually what you are
2 here, you planned to rob a bank
3 and you carried it out and you put
4 someone under fear, not for her own
5 life but for the health and safety
6 of someone whom she loves, and you
7 did that deliberately. Now, I
8 have faith that these people who
9 stand behind you will counsel you
10 and advise you as the years go on
11 so that you won't get back into
12 this mishap and this type of life.
13 So on that basis, I see no place
14 for the application of the
15 Youthful Offender's Act which was
16 designed to provide for treatment
17 and tutilege, treatment and super-
18 vision, the statute says of someone
19 who has proceeded on the wrong
20 path by way of wrong upbringing,
21 by virtue of warped philosophy, or
22 by virtue of wrong companions,
23 would be given counselling, would
24 be given education, would be given
25 vocational training, so that when

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1 that person is released at the
2 time the Attorney General thought
3 that he or she should be released
4 the person would be a different
5 type. But look at yourself in the
6 mirror, you are intelligent, the
7 tests show you are very intelligent,
8 you have not dropped out of high
9 school, you finished high school,
10 you got your diploma, degree, you
11 have had all these opportunities,
12 your friends, your brothers, none
13 of them in any trouble so far as
14 the report to me, it is only you
15 of the five boys in the family that
16 are in any trouble at all, I don't
17 see any need for any treatment or
18 supervision of you. But there is
19 a need for punishment and despite
20 what you yourself say and whether
21 you are right or whether you are wrong
22 or whether I can add nothing to the
23 punishment that you have already
24 imposed upon yourself, through this
25 violation of the faith that everyone

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1 has had in you, whether that be
2 true or not, it is my duty to
3 punish you. And further than
4 that I have in all of this type
5 of case been aware of a need
6 for an aspect of deterrence both
7 of you in doing this type of thing
8 again and also and more importantly
9 than the effect on you yourself,
10 the effect on people, ganerally
11 people like you, people who might
12 themselves be tempted to make up
13 for inadvertent loss of fifteen
14 hundred dollars by walking into
15 a bank with or without a gun just
16 to rip off the money that is there,
17 there has to be deterrents.

18 Now, restitution has been made.
19 I am not naive enough to think
20 that this has come out of your
21 pocket except for the amount of
22 money that you had left over from
23 what you took, the balance of it.
24 I will agree that you have
25 obligated yourself to repay to whom-

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1 ever has advanced it, and I think
2 to that extent you have to be given
3 credit for restitution although
4 restitution is a very minor
5 aspect in my thinking in these
6 bank robberies, I have always
7 contended I am not a collection
8 agency, but the fact that someone
9 does make restitution is a factor.
10 The maximum incarceration, and I
11 am not going to be considering
12 a fine, the maximum incarceration
13 I can impose upon you is a period
14 of ten years. I am giving you
15 credit for the restitution. If it
16 were not for that, my maximum
17 sentence would not be ten years,
18 but would be eight, I am giving
19 you credit for restitution, the
20 sentence of the Court is that, and
21 this is under Count II of the
22 indictment to which you pleaded
23 guilty, you will be in custody of
24 the Attorney General of the United
25 States for a period of six years.

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1 MR. SCINTA:

Your Honor, the Court
indicated it would not be sentencing
under the Federal Youth Corrections
Act, it didn't say specifically but
it eluded to it in the discussion.

6 THE COURT:

I have decided for those
two reasons, namely, I don't think
Mr. Roche lends himself to the
need for treatment and supervision
that is called for in there. I
do have a basic feeling although
obviously I give individual consider-
ation in each case, but I do have
a basic feeling in bankrobbery cases
that it is not to be applied. The
primary reason is I don't see any
need for it in the case of Mr.
Roche.

19 MR. SCINTA:

Your Honor, just specifically
one of the provisions of the Federal
Youth Corrections Act is that
at the end of any period of
incarceration or any period of
custody with the Attorney General
the conviction can be set aside and

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1 automatically sets aside in some
2 cases, the end of periods of time
3 THE COURT: Mr. Roche is going to have to
4 wait --
5 MR. SCINTA: Well, may I just be heard then,
6 your Honor. I think Mr. Roche
7 by his demonstration of his back-
8 ground up to this point and by
9 his deviance from the law this one
10 major time, I think the overall
11 aspect now that the Court has
12 decided to take punishment as a
13 primary factor, I think when the
14 Court looks ahead toward the total
15 rehabilitation of this man in the
16 future, the opportunity or the
17 ability for him to work the next
18 couple of years with the goal and
19 not having a federal conviction or
20 a felony conviction against him
21 will be a much greater incentive
22 while he is incarcerated or in the
23 custody of the Attorney General.
24 Further, upon his release any advance-
25 ment he hopes to get either with Mr.

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1 Cavaretta's outfit or any other
2 outfit could be greatly affected
3 by a felony conviction, just to
4 mention one, the right to vote.

5 THE COURT:

I understand that. And the
6 right to be a lawyer, the right
7 to be a doctor, the right to be one
8 of professional status.

9 MR. SCINTA:

I think that in this situation
10 the Federal Youth Corrections Act
11 while maybe the treatment albeit
12 thereunder may not be sufficient
13 or justified to you, I think the
14 overall prospect of the man's
15 future should outweigh that also.
16 You can't have it both ways. It's
17 not only designed for underprivileged
18 children or people who have a wrong
19 attitude towards life. It is
20 designed for people who had a right
21 attitude, made a mistake and hopefully
22 will keep that right attitude. I
23 will ask the Court to very seriously
24 reconsider the Federal Youth
25 Corrections Act as a viable option.

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1 THE COURT:

2 Well, I have given it, I assure
3 you Mr. Scinta and Mr. Roche,
4 very thorough and deep consideration
5 and my determination, at least this
6 time, I don't mean to hold out
7 any indication that I will change
8 my mind, of course, you do have
9 a hundred and twenty days within
10 which to move for a reduction of
11 sentence, and any motion you make
12 in that regard will be given full
13 consideration and including any
14 further consideration of the
15 application of the Youthful Offender
16 Act. My apparent determination
17 quite firmly held that Mr. Roche
18 very determinedly came into this
19 situation and he is going to be
20 punished for it, part of that
21 punishment is incarceration. Other
22 facets of the punishment are the
23 loss of certain privileges that
24 people who have not been convicted
25 of a felony have, he will lose them.

MR. FRONK:

The Government moves to dismiss

Count I of the indictment, your Honor.

THE COURT: Granted.

MR. FRONK: Thank you, your Honor.

MR. SCINTA: Can he say goodbye to his family before he is taken into custody, your Honor?

THE COURT: Certainly.

MR. SCINTA: Thank you, your Honor.

I CERTIFY that the foregoing is a complete and accurate transcription of my stenotype notes taken herein.


EDNA J. PACZYNSKI
OFFICIAL REPORTER
USDC, WJNY

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USA vs. William Roche
T 930

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Asst. U. S. Attorney

Leslie R. Johnson

Sworn to before me this

21st day of Nov., 1977

Patricia A. Lacey

PATRICIA A. LACEY
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 1978